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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91268439
Party	Defendant Kadenwood LLC
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Submission	Motion to Compel Discovery or Disclosure
Filer's Name	Adam D. Mandell
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Signature	/adm/
Date	08/26/2021
Attachments	Motion to compel -w- declaration and exhibits.pdf(442441 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Cura Partners Inc.)	Opposition No. 91268439
)	
Opposer,)	App. Ser. No. 88314033
)	Mark: LEVEL SELECT
v.)	
)	
Kadenwood LLC)	
)	
Applicant.)	

APPLICANT’S MOTION TO COMPEL

Pursuant to 37 CFR Section 2.120(e) and TBMP Sections 523.01 and 523.02, Applicant, Kadenwood LLC, respectfully submits the following Motion to Compel. Applicant is simultaneously filing a supporting Declaration with attached Exhibits, all of which are incorporated herein.

I. INTRODUCTION

This proceeding is an opposition to the application for “LEVEL SELECT”, U.S. Serial No. 88314033, filed February 25, 2019 (“Applicant’s mark”). Discovery opened in this case on June 8, 2021. Docket No. 2. Discovery closes on December 5, 2021. *Id.*

Applicant served its first sets of interrogatories and document requests on the first day of discovery, namely, June 8, 2021, making them initially due by July 8, 2021. *See* Declaration of Adam D. Mandell, ¶ 3. Opposer requested, and Applicant consented, to an additional two (2) weeks of time to serve responses to Applicant’s interrogatories and document requests. *Id.* at ¶ 4. Opposer’s discovery responses were therefore due by July 22, 2021. Opposer served its discovery responses on July 22, 2021. *Id.* at ¶ 5.

Opposer’s responses to Requests 1-23, 27-31 and 33-34 indicate that “Opposer will produce non-privileged responsive documents . . .” or the like. However, to date, Opposer has

not actually produced any documents or other materials. *See* Declaration of Adam D. Mandell, ¶ 6. On August 13, 2021, the parties, through counsel, discussed outstanding discovery obligations. *Id.* at ¶ 7. At that time, Opposer’s counsel informed Applicant’s counsel that document production would, “begin in a couple of weeks”. *Id.* Applicant requested that Opposer, after this call, provide a date certain by which the document production would be completed. *Id.* To date, Applicant has not received further information on when document production would be completed, much less actually begin. *Id.*

On August 17, 2021, Applicant sent its letter regarding “Deficiencies in Opposer’s Responses to Applicant’s First Set of Document Requests.” *See* Declaration of Adam D. Mandell, ¶ 8. In this letter, Applicant detailed Opposer’s deficiencies, including an utter failure to produce any documents or other materials, and certain relevancy objections. This letter also contained a conference request for no later than August 19, 2021 to discuss Opposer’s discovery deficiencies. To date, Opposer has not identified a time to discuss Opposer’s discovery deficiencies. *Id.* at ¶ 9. In its email to Applicant’s attorney on August 24, 2021, Opposer’s attorney informed applicant that she would, “speak with [Opposer] as soon as possible and get back to regarding document exchange and meet-and-confer scheduling if necessary.” *Id.* at ¶ 10. Applicant’s counsel informed Opposer’s counsel that he would be required to file this motion to compel, but would welcome a conference to discuss the deficiencies before or after the filing. *Id.*

In the meantime, Opposer has served written discovery requests to Applicant on August 11, 2021. *Id.* at ¶ 11. The parties have also exchanged settlement proposals. *Id.*

In summary, to date, Applicant still has not received any documents in response to Applicant’s requests for production of documents originally served on the first day of discovery,

namely, June 8, 2021, or even any information as when such production will begin or end.

Counsel for Applicant has made numerous good-faith efforts to resolve this discovery dispute in its correspondence to Applicant's counsel on August 13, August 17 and August 24, 2021.

Applicant files the present motion to compel Opposer to provide information that has been requested throughout discovery. Applicant further moves the Board for an Order precluding Opposer from relying on any late-produced documents for its failure to comply with Applicant's discovery requests.

Opposer's conduct has unfairly and irreparably prejudiced Applicant's ability to conduct follow-up discovery and, ultimately, may harm its ability to prepare its pretrial disclosures. Applicant respectfully submits that it needs the Board's assistance in resolving this discovery dispute and advancing the discovery process.

II. LEGAL STANDARDS

"Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense" Fed. R. Civ. P. 26(b)(1); 37 C.F.R. § 2.120(b)(1). "Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence." Fed. R. Civ. P. 26(b)(1). A motion to compel may be filed when a party fails to answer an interrogatory or fails to produce requested documents. 37 C.F.R. § 2.120(e)(1). An "evasive or incomplete" answer or response "must be treated as a failure to" answer or respond. Fed. R. Civ. P. 37(a)(4).

III. ARGUMENT

Deficiencies Common to Responses to Requests 1-23, 27-31 and 33-34

In each of Opposer's responses to these document requests, Opposer indicates that "Opposer will produce non-privileged responsive documents . . ." or the like. However, to date, Opposer has not actually produced any documents or other materials.¹

In the present case, Opposer first requested an additional two (2) weeks of time to respond to Applicant's discovery requests, to which Applicant agreed. Even with these extensions of time granted by Applicant, and following the passage of over an additional month of time, Opposer has still failed to produce documents responsive to Applicant's document requests, and has further failed to provide any date or even a time frame in which Applicant can expect to receive the documents.

Thus, even though Applicant has been flexible with Opposer, Opposer has still failed to produce documents and information responsive to Applicant's discovery requests. Further, Opposer has not been willing to provide Applicant with any sort of date or time frame in which Applicant can expect to receive the documents Opposer has admittedly failed to produce.

¹ For the sake of brevity, Applicant has not recited the full text of each request and/or response in the body of this motion. However, in each of the referenced responses, Opposer indicates that documents will be produced, but no documents have actually been produced. The full text of each request and response are in the attachments to this motion.

IV. CONCLUSION

For the reasons stated herein, Applicant respectfully requests an Order compelling Opposer's disclosure of information related to its June 8, 2021 document production and an Order precluding Opposer from relying on any information or documents that are not disclosed during discovery.

Respectfully submitted,

Kadenwood LLC

/adm/

Adam D. Mandell

Michael S. Culver

Scott J. Major

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Applicant's attorneys

Certificate of Service

This is to certify that a copy of APPLICANT'S MOTION TO COMPEL was served on August 26, 2021 by email on Opposer's attorney as follows:

PARNA A. MEHRBANI
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/adm/

Adam D. Mandell

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Cura Partners Inc.)	Opposition No. 91268439
)	
Opposer,)	App. Ser. No. 88314033
)	Mark: LEVEL SELECT
v.)	
)	
Kadenwood LLC)	
)	
Applicant.)	

DECLARATION OF ADAM D. MANDELL

I, Adam D. Mandell, declare as follows:

1. I am an attorney of record for Applicant in this proceeding.
2. I have conferred with counsel for Opposer orally by telephone conference and in writing through several email exchanges regarding the issues raised by the instant motion, but have not been able to resolve by agreement those issues.
3. Applicant served its first sets of interrogatories and document requests on June 8, 2021. A true and correct copy of Applicant's first set of document requests is attached hereto as *Exhibit 1*.
4. Opposer requested, and Applicant consented, to an additional two (2) weeks of time to serve responses to Applicant's interrogatories and document requests.
5. Opposer served its discovery responses on July 22, 2021. A true and correct copy of Opposer's responses to Applicant's first set of document requests is attached hereto as *Exhibit 2*.
6. To date, Opposer has not actually produced any documents or other materials.
7. On August 13, 2021, the parties, through counsel, discussed outstanding discovery obligations. At that time, Opposer's counsel informed Applicant's counsel that document production would, "begin in a couple of weeks". Applicant requested that Opposer, after this

call, provide a date certain by which the document production would be completed. To date, Applicant has not received further information on when document production would be completed, much less actually begin.

8. On August 17, 2021, Applicant sent its letter regarding “Deficiencies in Opposer’s Responses to Applicant’s First Set of Document Requests.” A true and correct copy of this letter is attached hereto as *Exhibit 3*.

9. To date, Opposer has not identified a time to discuss Opposer’s discovery deficiencies.

10. In its email to Applicant’s attorney on August 24, 2021, Opposer’s attorney informed applicant that she would, “speak with [Opposer] as soon as possible and get back to regarding document exchange and meet-and-confer scheduling if necessary.” Applicant’s counsel informed Opposer’s counsel that he would be required to file this motion to compel, but would welcome a conference to discuss the deficiencies before or after the filing.

11. Opposer has served written discovery requests to Applicant on August 11, 2021. The parties have also exchanged settlement proposals.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on August 26, 2021, at Austin, Texas

By: /adm/
Adam D. Mandell

Exhibit 1

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Cura Partners Inc.)	Opposition No. 91268439
)	
Opposer,)	App. Ser. No. 88314033
)	Mark: LEVEL SELECT
v.)	
)	
Kadenwood LLC)	
)	
Applicant.)	

APPLICANT'S FIRST SET OF REQUESTS FOR DOCUMENTS

Applicant hereby requests that Opposer produce all documents within Opposer's possession, custody or control that are requested in the following requests for production in accordance with Rule 2.120 of the Trademark Rules of Practice, 37 CFR § 2.120, and Rule 34 of the Federal Rules of Civil Procedure.

For the purpose of the following requests for production, the Definitions and Guidelines set forth in Applicant's First Set of Interrogatories to Opposer shall govern.

REQUESTS FOR PRODUCTION

Request No. 1

All documents that refer or relate to Applicant's Mark including all internal and external communications and comments regarding Applicant and Applicant's Mark, including any and all text messages and emails.

Request No. 2

All documents referring or relating to Opposer's first awareness of Applicant's Mark.

Request No. 3

Representative documents showing each different use, or intended use, of the Opposer's Mark on or in connection with any goods and/or services identified thereby.

Request No. 4

Representative documents showing the purpose of each of Opposer's Goods including, without limitation, (A) whether such goods are for cosmetic purposes, medical purposes and/or both, (B) whether such good is medicated, non-medicated and/or both, (C) whether such good is for the reliefs of aches and pains, (D) whether such good has a therapeutic or medicinal use, (E) whether such good is or is intended to comprise ingredients derived from hemp with a delta-9 tetrahydrocannabinol [THC] concentration of not more than 0.3 percent on a dry weight basis, and (F) whether such good is intended to be ingested.

Request No. 5

Representative documents showing that Opposer has been using the SELECT mark since at least as early as October 1, 2016.

Request No. 6

Representative documents showing that Opposer's SELECT products have been available in California since April 2017.

Request No. 7

Representative documents showing that Opposer has continuously and regularly used the mark SELECT in connection with hemp-oil based products in interstate commerce since at least as early as May, 2017, including on topical products since at least as early as March, 2018.

Request No. 8

Representative documents showing that Opposer currently uses the SELECT mark for hemp-oil based products.

Request No. 9

Representative documents showing that Opposer has continuously and regularly used the mark S SELECT & Design:



in connection with hemp-oil based products in interstate commerce since at least as early as May, 2017, including on topical products since at least as early as March, 2018.

Request No. 10

Representative documents showing that Opposer currently uses the S SELECT & Design mark for hemp-oil based products.

Request No. 11

Representative documents showing that Opposer has continuously and regularly used the mark SELECT BETTER in connection with the promotion and advertising of its hemp-oil based products since at least as early as August, 2018.

Request No. 12

Representative documents showing that Opposer currently uses the SELECT BETTER mark in connection with the promotion and advertising of its hemp-oil based products.

Request No. 13

All documents showing that Opposer has used the mark SELECT BETTER on any goods and/or services including, without limitation, hemp-oil based products.

Request No. 14

All documents showing that the marks SELECT, S SELECT & Design, and SELECT BETTER have gained recognition and goodwill among the purchasing public.

Request No. 15

All documents referring or relating the conception, selection, and/or adoption of Opposer's Mark.

Request No. 16

All documents referring or relating to the advertising and promotion (actual or intended) of Opposer's Mark or the goods and/or services identified thereby.

Request No. 17

All documents referring or relating to any meaning, derivation and/or significance of the wording in Opposer's Mark.

Request No. 18

All documents referring or relating to any surveys, studies, analysis and/or polls with respect to Opposer's Mark, including any criteria, strategy or market plan with respect to that mark.

Request No. 19

All documents referring or relating to any customer or informational profile for purchasers or prospective purchasers of goods and/or services identified by Opposer's Mark, including, for example, purchasing decisions, buying habits, and alternative or competitive product choices.

Request No. 20

All documents showing any unsolicited communication in the media that refers or relates to Opposer's Mark.

Request No. 21

All documents referring or relating to the target customers, or potential customers, for any goods and/or services identified by Opposer's Mark.

Request No. 22

All documents referring or relating to the channels of trade for any goods and/or services identified, or to be identified, by Opposer's Mark.

Request No. 23

All documents referring or relating to Opposer's *bona fide* intent to use Opposer's Mark prior to filing any application to register the mark.

Request No. 24

All documents referring or relating to (A) any actual confusion with respect to Opposer's Mark and Applicant's Mark or (B) any instance when a person mistakenly made any affiliation,

association, or connection between Applicant and Opposer or their respective marks or goods and services.

Request No. 25

All documents referring or relating to use of the words “select” (alone or with other words) as applied to Opposer’s Goods, apart from any use by Applicant and Opposer.

Request No. 26

All documents referring or relating to all uses or persons whom Opposer has identified as in any way using the term “select” in a laudatory manner.

Request No. 27

All documents referring or relating to any contention by Opposer that there is a likelihood of confusion between Opposer’s Mark and Applicant’s Mark.

Request No. 28

All documents referring or relating to any contention by Opposer that Applicant’s Mark is invalid, unenforceable, and/or otherwise not entitled to protection.

Request No. 29

All documents referring or relating to any contention by Opposer that the mark Opposer’s Mark has any priority over Applicant’s use of Applicant’s Mark.

Request No. 30

All documents referring or relating to any contention by Opposer that the application at issue in this proceeding was filed fraudulently.

Request No. 31

All documents referring or relating to any contention by Opposer that Opposer’s Mark is the best-selling cannabis brand on the West Coast.

Request No. 32

All documents referring or relating to Opposer's state trademark registrations.

Request No. 33

For each Opposer's Goods, representative documents relative to the THC content of the oils, extracts or derivatives used or to be used in the goods, such as sample reports from an independent third-party laboratory.

Request No. 34

All agreements concerning Opposer's Marks, including all licenses, assignments and co-existence agreements.

Dated: June 8, 2021

Kadenwood LLC

/adm/

Adam D. Mandell

Michael S. Culver

Scott J. Major

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Applicant's attorneys

Certificate of Service

This is to certify that a copy of APPLICANT'S FIRST SET OF REQUESTS FOR DOCUMENTS was served on June 8, 2021 by email on Opposer's attorney as follows:

PARNA A. MEHRBANI
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UNITED STATES
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Phone: 15038022170

/adm/

Adam D. Mandell

Exhibit 2

seeks documents that are not reasonably calculated to lead to the discovery of admissible evidence.

5. Opposer objects to each Request to the extent that it purports to require the production of documents not presently within the possession, custody, or control of Opposer.

6. Opposer objects to each Request to the extent it does not identify the documents requested with reasonable particularity. Opposer will make a reasonable effort to construe Applicant's requests and will produce documents based on that construction.

7. Opposer objects to the production of documents that are confidential and/or proprietary financial documents unless production is made subject to a Board-ordered Protective Order.

8. Opposer objects to the definition of "Opposer's Mark" set forth in the instructions and definitions accompanying Applicant's First Request for Production to the extent the term includes marks other than those described in Opposer's U.S. trademark applications Ser. Nos. 87825466, 87825460 and 88376366.

9. Opposer objects to the definition of "Opposer's Goods" set forth in the instructions and definitions accompanying Applicant's First Request for Production to the extent the term includes goods other than those described in Opposer's U.S. trademark applications Ser. Nos. 87825466, 87825460 and 88376366 or described in Opposer's Notice of Opposition.

10. Opposer's willingness to produce documents pursuant to a specific request does not mean that there are documents in existence which are responsive to that request.

11. Opposer has not completed its discovery and investigation of the facts and evidence relevant to this action, and expressly reserves the right to introduce at

trial or otherwise rely on information, documents, or witnesses discovered after the date of these answers/objections.

12. Each of the preceding general objections is incorporated by reference into the specific responses below.

DOCUMENTS TO BE PRODUCED

REQUEST FOR PRODUCTION NO. 1: All documents that refer or relate to Applicant's Mark including all internal and external communications and comments regarding Applicant and Applicant's Mark, including any and all text messages and emails.

RESPONSE: Opposer objects to this Request as overly broad because it is unbounded in time, and unbounded with respect to the goods or services identified by Applicant's Mark. Opposer further objects to this Request to the extent it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privilege or immunity. Subject to the foregoing general and specific objections, Opposer will produce non-privileged responsive documents, if any, in its custody or control which relate to Applicant's Mark, from January 2020, when Cura first learned of Applicant, to the present.

REQUEST FOR PRODUCTION NO. 2: All documents referring or relating to Opposer's first awareness of Applicant's Mark.

RESPONSE: Opposer objects to this Request as overly broad because it is unbounded in time, and unbounded with respect to the goods or services identified by Applicant's Mark. Opposer further objects to this Request to the extent it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privilege or immunity. Subject to the foregoing general and specific objections, Opposer will produce non-privileged responsive documents, if any, in its custody or control sufficient to show Opposer's first awareness of Applicant's Mark in connection with the goods described in the Opposition.

REQUEST FOR PRODUCTION NO. 3: Representative documents showing each different use, or intended use, of the Opposer's Mark on or in connection with any goods and/or services identified thereby.

RESPONSE: Opposer objects to this Request to the extent it seeks documents unrelated to Opposer's use of Opposer's Marks in connection with the specific categories of goods described in the Notice of Opposition, and is therefore overbroad, disproportionate to the needs of the case, and is not likely to lead to the discovery of admissible evidence. Opposer further objects to this Request to the extent it seeks competitive business information. Subject to the foregoing general and specific objections, and subject to the protective order, Opposer will produce non-privileged responsive documents, if any, in its custody or control related to the specific categories of goods described in the Notice of Opposition.

REQUEST FOR PRODUCTION NO. 4: Representative documents showing the purpose of each of Opposer's Goods including, without limitation, (A) whether such goods are for cosmetic purposes, medical purposes and/or both, (B) whether such good is medicated, non-medicated and/or both, (C) whether such good is for the reliefs of aches and pains, (D) whether such good has a therapeutic or medicinal use, (E) whether such good is or is intended to comprise ingredients derived from hemp with a delta-9 tetrahydrocannabinol [THC] concentration of not more than 0.3 percent on a dry weight basis, and (F) whether such good is intended to be ingested.

RESPONSE: Opposer objects to this Request to the extent it seeks documents unrelated to Opposer's use of Opposer's Marks in connection with the specific categories of goods described in the Notice of Opposition, and to the extent subsections (A) through (F) are repetitive and duplicative, and contain undefined words such as "therapeutic" that are vague; therefore the Request overbroad, disproportionate to the needs of the case, and is not likely to lead to the discovery of

admissible evidence. Opposer further objects to this Request to the extent it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privilege or immunity. Opposer has provided Applicant with Opposer's applications, set forth as Exhibits 1 through 3 of the Notice of Opposition, and provided responsive information in response to Applicant's First Set of Interrogatories, particularly Opposer's Answers to Interrogatory Nos. 18-21 and 35-26 and Table 1 set forth in its Objections and Answers to Applicant's the First Set of Interrogatories, which are sufficient to show the information requested in subparts (A) through (F). Subject to the foregoing general and specific objections, Opposer will produce additional non-privileged responsive documents, if any, in its custody or control.

REQUEST FOR PRODUCTION NO. 5: Representative documents showing that Opposer has been using the SELECT mark since at least as early as October 1, 2016.

RESPONSE: Opposer objects to this Request to the extent it seeks documents unrelated to Opposer's use of Opposer's Marks in connection with the specific categories of goods described in the Notice of Opposition, and is therefore overbroad, disproportionate to the needs of the case, and is not likely to lead to the discovery of admissible evidence. Opposer further objects to this Request to the extent it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privilege or immunity. Opposer further objects to this Request as seeking documents from an irrelevant and unduly burdensome period of time. Subject to the foregoing general and specific objections, Opposer will produce non-privileged responsive documents, if any, in its custody or control from May 2017 to the present.

REQUEST FOR PRODUCTION NO. 6: Representative documents showing that Opposer's SELECT products have been available in California since April 2017.

RESPONSE: Opposer objects to this Request to the extent it seeks documents unrelated to Opposer's use of Opposer's Marks in connection with the specific categories of goods described in the Notice of Opposition, and is therefore overbroad, disproportionate to the needs of the case, and is not likely to lead to the discovery of admissible evidence. Opposer further objects to this Request because the availability of SELECT products in California is not relevant to the proceedings. Opposer further objects to this Request to the extent it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privilege or immunity. Opposer further objects to this Request as seeking documents from an irrelevant and unduly burdensome period of time. Subject to the foregoing general and specific objections, Opposer will produce non-privileged responsive documents, if any, in its custody or control from May 2017 to the present.

REQUEST FOR PRODUCTION NO. 7: Representative documents showing that Opposer has continuously and regularly used the mark SELECT in connection with hemp-oil based products in interstate commerce since at least as early as May, 2017, including on topical products since at least as early as March, 2018.

RESPONSE: Subject to the foregoing general objections, Opposer will produce non-privileged responsive documents in its custody or control.

REQUEST FOR PRODUCTION NO. 8: Representative documents showing that Opposer currently uses the SELECT mark for hemp-oil based products.

RESPONSE: Subject to the foregoing general objections, Opposer will produce non-privileged responsive documents in its custody or control.

REQUEST FOR PRODUCTION NO. 9: Representative documents showing that Opposer has continuously and regularly used the mark S SELECT & Design:



in connection with hemp-oil based products in interstate commerce since at least as early as May, 2017, including on topical products since at least as early as March, 2018.

RESPONSE: Subject to the foregoing general objections, Opposer will produce non-privileged responsive documents in its custody or control.

REQUEST FOR PRODUCTION NO. 10: Representative documents showing that Opposer currently uses the S SELECT & Design mark for hemp-oil based products.

RESPONSE: Subject to the foregoing general objections, Opposer will produce non-privileged responsive documents in its custody or control.

REQUEST FOR PRODUCTION NO. 11: Representative documents showing that Opposer has continuously and regularly used the mark SELECT BETTER in connection with the promotion and advertising of its hemp-oil based products since at least as early as August, 2018.

RESPONSE: Subject to the foregoing general objections, Opposer will produce non-privileged responsive documents in its custody or control.

REQUEST FOR PRODUCTION NO. 12: Representative documents showing that Opposer currently uses the SELECT BETTER mark in connection with the promotion and advertising of its hemp-oil based products.

RESPONSE: Subject to the foregoing general objections, Opposer will produce non-privileged responsive documents in its custody or control.

REQUEST FOR PRODUCTION NO. 13: All documents showing that Opposer has used the mark SELECT BETTER on any goods and/or services including, without limitation, hemp-oil based products.

RESPONSE: Opposer objects to this Request to the extent it seeks documents unrelated to Opposer's use of Opposer's Marks in connection with the specific categories of goods described in the Notice of Opposition, and is therefore overbroad, disproportionate to the needs of the case, and is not likely to lead to the discovery of admissible evidence. Opposer further objects to this Request duplicative of Requests 11 and 12. Opposer further objects to this Request as overbroad to the extent it seeks "*all* documents" rather than representative documents. Subject to the foregoing general and specific objections, Opposer will produce representative non-privileged responsive documents in its custody or control.

REQUEST FOR PRODUCTION NO. 14: All documents showing that the marks SELECT, S SELECT & Design, and SELECT BETTER have gained recognition and goodwill among the purchasing public.

RESPONSE: Opposer objects to this Request as overbroad to the extent it seeks "*all* documents" rather than representative documents. Subject to the foregoing general objections, Opposer will produce representative non-privileged responsive documents in its custody or control.

REQUEST FOR PRODUCTION NO. 15: All documents referring or relating the conception, selection, and/or adoption of Opposer's Mark.

RESPONSE: Opposer objects to this Request because the conception and adoption of Opposer's Mark is not relevant to any claim or defense in this Opposition. Opposer further objects to this Request to the extent it seeks documents unrelated to Opposer's use of Opposer's Marks in connection with the specific categories of goods described in the Notice of Opposition, and is therefore overbroad, disproportionate to the needs of the case, and is not likely to lead to the discovery of admissible evidence. Opposer further objects to this Request because, in requesting *all* documents, it is overly broad, unduly burdensome, and is not proportional to the needs of this matter. Opposer further objects to this Request to the extent it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privilege or immunity. Subject to the foregoing general and specific objections, Opposer will produce representative non-privileged responsive documents in its custody or control, if any.

REQUEST FOR PRODUCTION NO. 16: All documents referring or relating to the advertising and promotion (actual or intended) of Opposer's Mark or the goods and/or services identified thereby.

RESPONSE: Opposer objects to this Request to the extent it seeks documents unrelated to Opposer's use of Opposer's Marks in connection with the specific categories of goods described in the Notice of Opposition, and is therefore overbroad, disproportionate to the needs of the case, and is not likely to lead to the discovery of admissible evidence. Opposer further objects to this Request as overbroad in that it is not limited in time. Opposer further objects to this Request to the extent it seeks competitive business information. Subject to the foregoing general and specific objections, and subject to the protective order, Opposer will produce representative, non-privileged responsive documents in its custody or control.

REQUEST FOR PRODUCTION NO. 17: All documents referring or relating to any meaning, derivation and/or significance of the wording in Opposer's Mark.

RESPONSE: Opposer objects to this Request because, in requesting *all* documents, it is overly broad, unduly burdensome, and is not proportional to the needs of this matter. Subject to the foregoing general and specific objections, Opposer will produce representative samples of materials, if any exist, to show the meaning, derivation, and or significance of the wording in Opposer's Marks.

REQUEST FOR PRODUCTION NO. 18: All documents referring or relating to any surveys, studies, analysis and/or polls with respect to Opposer's Mark, including any criteria, strategy or market plan with respect to that mark.

RESPONSE: Opposer objects to this Request to the extent it seeks documents unrelated to Opposer's use of Opposer's Marks in connection with the specific categories of goods described in the Notice of Opposition, and is therefore overbroad, disproportionate to the needs of the case, and is not likely to lead to the discovery of admissible evidence. Opposer further objects to this Request as overbroad in that it is not limited in time. Opposer further objects to this Request because, in requesting *all* documents, it is overly broad, unduly burdensome, and is not proportional to the needs of this matter. Opposer further objects to this Request to the extent it seeks competitive business information. Subject to the foregoing general and specific objections, and subject to the protective order, Opposer will produce representative non-privileged responsive documents in its custody or control, if any.

REQUEST FOR PRODUCTION NO. 19: All documents referring or relating to any customer or informational profile for purchasers or prospective purchasers of goods and/or services identified by Opposer's Mark, including, for

example, purchasing decisions, buying habits, and alternative or competitive product choices.

RESPONSE: Opposer objects to this Request to the extent it seeks documents unrelated to Opposer's use of Opposer's Marks in connection with the specific categories of goods described in the Notice of Opposition, and is therefore overbroad, disproportionate to the needs of the case, and is not likely to lead to the discovery of admissible evidence. Opposer further objects to this Request as overbroad in that it is not limited in time. Opposer further objects to this Request because, in requesting *all* documents, it is overly broad, unduly burdensome, and is not proportional to the needs of this matter. Opposer further objects to this Request to the extent it seeks competitive business information. Subject to the foregoing general and specific objections, and subject to the protective order, Opposer will produce representative non-privileged responsive documents in its custody or control, if any.

REQUEST FOR PRODUCTION NO. 20: All documents showing any unsolicited communication in the media that refers or relates to Opposer's Mark.

RESPONSE: Opposer objects to this Request to the extent it seeks documents unrelated to Opposer's use of Opposer's Marks in connection with the specific categories of goods described in the Notice of Opposition, and is therefore overbroad, disproportionate to the needs of the case, and is not likely to lead to the discovery of admissible evidence. Opposer further objects to this Request as overbroad in that it is not limited in time. Opposer further objects to this Request because, in requesting *all* documents, it is overly broad, unduly burdensome, and is not proportional to the needs of this matter. Opposer further objects to this Request because it seeks information outside of Opposer's custody or control. Opposer further objects to this Request because the phrase "communication in the media" is ambiguous. Subject to the foregoing general and specific objections, Opposer will

construe the Request to seek documents that refer to or relate to Opposer's Marks, as used on the specific goods described in the Opposition, and will produce representative non-privileged responsive documents in its custody or control, if any.

REQUEST FOR PRODUCTION NO. 21: All documents referring or relating to the target customers, or potential customers, for any goods and/or services identified by Opposer's Mark.

RESPONSE: Opposer objects to this Request to the extent it seeks documents unrelated to Opposer's use of Opposer's Marks in connection with the specific categories of goods described in the Notice of Opposition, and is therefore overbroad, disproportionate to the needs of the case, and is not likely to lead to the discovery of admissible evidence. Opposer further objects to this Request as overbroad in that it is not limited in time. Opposer further objects to this Request because, in requesting *all* documents, it is overly broad, unduly burdensome, and is not proportional to the needs of this matter. Opposer further objects to this Request to the extent it seeks competitive business information. Subject to the foregoing general and specific objections, and subject to the protective order, Opposer will produce non-privileged responsive documents in its custody or control, if any, sufficient to show target or potential customers for goods described in the Notice of Opposition using Opposer's Marks.

REQUEST FOR PRODUCTION NO. 22: All documents referring or relating to the channels of trade for any goods and/or services identified, or to be identified, by Opposer's Mark.

RESPONSE: Opposer objects to this Request to the extent it seeks documents unrelated to Opposer's use of Opposer's Marks in connection with the specific categories of goods described in the Notice of Opposition, and is therefore overbroad, disproportionate to the needs of the case, and is not likely to lead to the discovery of admissible evidence. Opposer further objects to this Request as

overbroad in that it is not limited in time. Opposer further objects to this Request because, in requesting *all* documents, it is overly broad, unduly burdensome, and is not proportional to the needs of this matter. Opposer further objects to this Request to the extent it seeks competitive business information. Subject to the foregoing general and specific objections, and subject to the protective order, Opposer will produce non-privileged responsive documents in its custody or control, if any, sufficient to show the channels of trade for goods described in the Notice of Opposition using Opposer's Marks.

REQUEST FOR PRODUCTION NO. 23: All documents referring or relating to Opposer's *bona fide* intent to use Opposer's Mark prior to filing any application to register the mark.

RESPONSE: Opposer objects to this Request as unlikely to lead to the discovery of admissible evidence because Opposer's intent to use Opposer's Marks is not relevant to this proceeding. Subject to the foregoing general and specific objections, Opposer has provided Applicant with Opposer's applications, set forth as Exhibits 1 through 3 of the Notice of Opposition, and will produce additional documents sufficient to show actual use in response to other Requests for Production propounded by Applicant, including but not limited to Request Nos. 3, 5–13, 16, 29, 31, and 34.

REQUEST FOR PRODUCTION NO. 24: All documents referring or relating to (A) any actual confusion with respect to Opposer's Mark and Applicant's Mark or (B) any instance when a person mistakenly made any affiliation, association, or connection between Applicant and Opposer or their respective marks or goods and services.

RESPONSE: Opposer objects to this Request to the extent it seeks documents unrelated to Opposer's use of Opposer's Marks in connection with the specific categories of goods described in the Notice of Opposition, and is therefore

overbroad, disproportionate to the needs of the case, and is not likely to lead to the discovery of admissible evidence. Opposer further objects to this Request as overbroad in that it is not limited in time. Opposer further objects to this Request to the extent it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privilege or immunity. Subject to the foregoing general and specific objections, Opposer is not aware of instances in which a person mistakenly associated Opposer's Goods or Opposer's Marks with those of Applicant and therefore has no such documents.

REQUEST FOR PRODUCTION NO. 25: All documents referring or relating to use of the words "select" (alone or with other words) as applied to Opposer's Goods, apart from any use by Applicant and Opposer.

RESPONSE: Opposer objects to this Request because it is unduly burdensome and seeks information outside of Opposer's custody or control regarding third parties' use of the word "select." Opposer further objects to this Request as it seeks information as easily obtainable by Applicant as by Opposer. Subject to the foregoing general and specific objections, Opposer is unaware of any uses for the word "select" as applied to Opposer's Goods apart from the uses by Opposer and Applicant and therefore has no such documents.

REQUEST FOR PRODUCTION NO. 26: All documents referring or relating to all uses or persons whom Opposer has identified as in any way using the term "select" in a laudatory manner.

RESPONSE: Opposer objects to this Request as overbroad and unduly burdensome because it seeks the identity of *all persons* Opposer has identified using the term "select" in a laudatory manner. Opposer further objects to the term "laudatory" as vague. Opposer further objects to this Request as it seeks information as easily obtainable by Applicant as by Opposer. Subject to the

foregoing general and specific objections, Opposer has not collected nor does it have in its possession, custody, or control any such documents.

REQUEST FOR PRODUCTION NO. 27: All documents referring or relating to any contention by Opposer that there is a likelihood of confusion between Opposer's Mark and Applicant's Mark.

RESPONSE: Opposer objects to this Request to the extent it seeks legal conclusions. Opposer further objects to this Request to the extent it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privilege or immunity. Subject to the foregoing general and specific objections, Opposer will produce non-privileged responsive documents in its custody or control.

REQUEST FOR PRODUCTION NO. 28: All documents referring or relating to any contention by Opposer that Applicant's Mark is invalid, unenforceable, and/or otherwise not entitled to protection.

RESPONSE: Opposer objects to this Request to the extent it seeks legal conclusions. Opposer objects to this Request to the extent it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privilege or immunity. Opposer further objects to this Request to the extent it seeks documents in Applicant's possession, custody, or control. Subject to the foregoing general and specific objections, Opposer will produce non-privileged responsive documents, if any, in its custody or control.

REQUEST FOR PRODUCTION NO. 29: All documents referring or relating to any contention by Opposer that the mark Opposer's Mark has any priority over Applicant's use of Applicant's Mark.

RESPONSE: Opposer objects to this Request to the extent it seeks documents unrelated to Opposer's use of Opposer's Marks in connection with the specific categories of goods described in the Notice of Opposition, and is therefore

overbroad, disproportionate to the needs of the case, and is not likely to lead to the discovery of admissible evidence. Opposer further objects to this Request to the extent it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privilege or immunity. Subject to the foregoing general and specific objections, Opposer has provided Applicant with Opposer's applications, set forth as Exhibits 1 through 3 of the Notice of Opposition, and will produce additional non-privileged responsive documents in its custody or control.

REQUEST FOR PRODUCTION NO. 30: All documents referring or relating to any contention by Opposer that the application at issue in this proceeding was filed fraudulently.

RESPONSE: Opposer objects to this Request to the extent it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privilege or immunity. Opposer further objects to this Request to the extent it seeks documents in Applicant's possession, custody, or control. Subject to the foregoing general and specific objections, Opposer will produce non-privileged responsive documents, if any, in its custody or control.

REQUEST FOR PRODUCTION NO. 31: All documents referring or relating to any contention by Opposer that Opposer's Mark is the best-selling cannabis brand on the West Coast.

RESPONSE: Opposer objects to this Request as overbroad in that it is unbounded in time. Opposer further objects to this Request to the extent it seeks information unrelated to Opposer's use of Opposer's Marks in connection with the specific categories of goods described in the Notice of Opposition, and the requested information is not relevant to any claim or defense in this Opposition and it is therefore overbroad, disproportionate to the needs of the case, and is not likely to lead to the discovery of admissible evidence. Opposer further objects to this request

as duplicative of prior Requests, including without limitation Request No. 14. Subject to the foregoing general and specific objections, Opposer will produce non-privileged responsive documents in its custody or control, if any.

REQUEST FOR PRODUCTION NO. 32: All documents referring or relating to Opposer's state trademark registrations.

RESPONSE: Opposer objects to this Request because Opposer's state trademark registrations are not relevant to any claim or defense in this Opposition, therefore this Request as overbroad and disproportionate to the needs of the case. Opposer further objects to this Request to the extent it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privilege or immunity. Pursuant to the foregoing general and specific objections, Opposer will not produce documents responsive to this request.

REQUEST FOR PRODUCTION NO. 33: For each Opposer's Goods, representative documents relative to the THC content of the oils, extracts or derivatives used or to be used in the goods, such as sample reports from an independent third-party laboratory.

RESPONSE: Opposer objects to this Request to the extent it seeks documents unrelated to Opposer's use of Opposer's Marks in connection with the specific categories of goods described in the Notice of Opposition, and is therefore overbroad, disproportionate to the needs of the case, and is not likely to lead to the discovery of admissible evidence. Opposer further objects to this Request to the extent it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privilege or immunity. Opposer further objects to this request as duplicated of Request No. 4. Subject to the foregoing general and specific objections, Opposer will produce non-privileged responsive documents in its custody or control.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing OPPOSER'S OBJECTIONS AND RESPONSES TO FIRST REQUEST FOR PRODUCTION has been served on counsel for Applicant by forwarding said copy on July 22, 2021, via email to:

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s/ Stephanie J. Grant
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040091\09000\12571113v1

Exhibit 3



MILLEN, WHITE, ZELANO & BRANIGAN, P.C.

HARRY B. SHUBIN
BRION P. HEANEY
RICHARD J. TRAVERSO
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August 17, 2021

Via Electronic Mail

Parna Mehrbani
Stephanie Grant
Tonkon Torp LLP
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Re: Deficiencies in Opposer's Responses to Applicant's First Set of Document Requests

Cura Partners Inc. v. Kadenwood LLC, Opposition No. 91268439

Dear Counsel,

Applicant Kadenwood LLC requests that Opposer Cura Partners Inc. remedy the following deficiencies in their responses to Applicant's first set of requests for production of documents. Revised responses and documents are requested no later than **August 19, 2021**.

On June 8, 2021, Applicant served its First Set of Requests for Documents. By agreement of the Applicant, Opposer's responses were due no later than July 22, 2021. One July 22, 2021, Opposer served responses. These responses are deficient for the reasons set forth below.

On August 13, 2021, the parties, through counsel, discussed outstanding discovery obligations. At that time, Opposer's counsel informed Applicant's counsel that document production would, "begin in a couple of weeks". Applicant requested that Opposer, after this call, provide a date certain by which the document production would be completed. To date, Applicant has not received further information.

Conference Request:

Applicant appreciates Opposer's prompt response to this correspondence. In the event that Opposer refuses to provide revised responses and/or documents, please identify a time on or before **August 19, 2021** to conduct a conference pursuant to 37 C.F.R. § 2.120(f).

I. Deficiencies Common to Responses to Requests 1-23, 27-31 and 33-34

In each of Opposer's responses to these document requests, Opposer indicates that "Opposer will produce non-privileged responsive documents . . ." or the like. However, to date, Opposer has not actually produced any documents or other materials. Please remedy this deficiency by producing responsive documents on or before August 19, 2021.

II. Deficiencies Common to Responses to Requests 5, 6, 15, 23, 31 and 32

Applicant's request No. 5 is: "Representative documents showing that Opposer has been using the SELECT mark since at least as early as October 1, 2016." Opposer's response, in pertinent part, is:

“Opposer further objections to this Request as seeking documents from an irrelevant and unduly burdensome period of time.”

Applicant’s request No. 6 is: “Representative documents showing that Opposer’s SELECT products have been available in California since April 2017. Opposer’s response, in pertinent part, is: “Opposer further objects to this Request because the availability of SELECT products in California is not relevant to the proceedings . . . Opposer further objections to this Request as seeking documents from an irrelevant and unduly burdensome period of time.”

Applicant’s request No. 15 is: “All documents referring or relating the conception, selection, and/or adoption of Opposer’s Mark.” Opposer’s response, in pertinent part, is: “Opposer objects to this Request because the conception and adoption of Opposer’s Mark is not relevant to any claim or defense in this Opposition.”

Applicant’s request No. 23 is: “All documents referring or relating to Opposer’s bona fide intent to use Opposer’s Mark prior to filing any application to register the mark.” Opposer’s response, in pertinent part, is: “Opposer objects to this Request as unlikely to lead to the discovery of admissible evidence because Opposer’s intent to use Opposer’s Marks is not relevant to this proceeding.”

Applicant’s request No. 31 is: “All documents referring or relating to any contention by Opposer that Opposer’s Mark is the best-selling cannabis brand on the West Coast.” Opposer’s response, in pertinent part, is: “Opposer further objects to this Request to the extent it seeks information unrelated to Opposer’s use of Opposer’s Marks in connection with the specific categories of goods described in the Notice of Opposition, and the requested information is not relevant to any claim or defense in this Opposition and it is therefore overbroad, disproportionate to the needs of the case, and is not likely to lead to the discovery of admissible evidence.”

Applicant’s discovery request No. 32 is: “All documents referring or relating to Opposer’s state trademark registrations.” Opposer’s Response is: “Opposer objects to this Request because Opposer’s state trademark registrations are not relevant to any claim or defense in this Opposition, therefore this Request as overbroad and disproportionate to the needs of the case . . . Pursuant to the foregoing general and specific objections, Opposer will not produce documents responsive to this request.”

The documents in these requests are central to Opposer’s grounds for opposition, namely “priority and likelihood of confusion” (See, Opposer’s Notice of Opposition, cover page) in that they would provide Applicant with evidence of Opposer’s alleged rights in the SELECT trademark. *See, e.g., Crosby v. La. Health Serv. & Indem. Co.*, 647 F.3d 258, 262 (5th Cir. 2011) (“A discovery request is relevant when the request seeks admissible evidence or ‘is reasonably calculated to lead to the discovery of admissible evidence.’”). Opposer’s objection to this document request on relevance is inappropriate.

Please remedy this deficiencies by withdrawing these objections and providing revised responses and producing responsive documents on or before August 19, 2021.

Applicant reserves the right to raise additional deficiencies in Opposer's responses to Applicant's discovery requests, a full recitation of which is not possible at this time.

Respectfully submitted,

/adm/

Adam D. Mandell